

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION  
C VIL APPLICATION NO.148 OF 2006  
IN  
SECOND APPEAL NO.471 OF 2003.**

Babu Budhala Nikam,  
since deceased through heirs  
Baban B. Nikam & Others ..Applicants

versus

Sou. Babai Dinkar Pawar  
& Others ..Respondents

Mr.V.V.Jadhav for the Applicant  
Mr. Dilip Bodake for the Respondent

**Coram : S.R.Sathe, J.  
Dated : 15th February, 2007**

P.C.

1. Heard both the learned Advocates.

2. As the original appellant has died his heirs have filed an application for review. In fact, there is delay in filing the application and as such they have also submitted an application for delay condonation. There is delay of 437 days in bringing heirs on record. It is the case of the present applicants that all along they were kept in dark by the then advocate by informing that the matter is in on board. Not only that, but they had also received one telegram purported to have been sent by the advocate. He has produced the xerox copy of the said telegram. It seems that even after receipt of

the said telegram, he made enquiries with the advocate, but the applicants were informed that the matter is on board. It is only when the execution started, they came to know that the second appeal was in fact dismissed long back. Considering all these facts and the reasons mentioned in the application I think that it is necessary in the interest of justice to condone the delay. However, as the present respondents have unnecessarily been put to inconvenience and they could not execute the decree, it is necessary to condone the delay subject to payment of cost. Hence, I pass the following order

#### ORDER

. The delay is condoned subject to applicant paying cost of Rs.2500/- ( Rupees Two Thousand Five Hundred Only) to the respondents in the present application.

. Payment of cost to the respondents is a condition precedent for further prosecution of the matter.

. Till then, the ad-interim relief granted

earlier is to continue.

. Application is disposed off.

(S.R.Sathe, J.)